COMMISSION IMPLEMENTING REGULATION (EU) No 716/2012

of 30 July 2012

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(a) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information which has been issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature but which is not in accordance with this Regulation can, for a period of three months, continue to be invoked by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [2].

(5) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information issued by the customs authorities of Member States, which is not in accordance with this Regulation, can continue to be invoked for a period of three months under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 July 2012.

For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission

[1] OJ L 256, 7.9.1987, p. 1.

[2] OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
1. Lactose-reduced colostrum powder in gelatine capsules, 120 capsules packaged for retail sale in a plastic screw-top container, with the following composition (% by weight): — Milk fat 4,9 — Milk protein 56,0 — Lactose 0,2 The daily dose recommended on the label is two capsules twice a day. According to the label the product is for human consumption.	1901 90 99	Classification is determined by the General Rules 1, 3(a) and 6 for the interpretation of the Combined Nomenclature and the wording of CN codes 1901, 1901 90 and 1901 90 99. The form of presentation of the powder in gelatine capsules determines the use and character of the product as a food preparation. Classification under heading 0404 is therefore excluded (see also the Harmonized System Explanatory Notes (HSEN) to Chapter 4, General, point (I), third paragraph, point (a)). The product cannot be classified as a food preparation of heading 2106 because it is more specifically described by the wording of heading 1901 as a food preparation of goods of headings 0401 to 0404 (see also the HSEN to heading 2106, point (1), second paragraph). As the product is not intended for therapeutic or prophylactic use within the meaning of Chapter 30, classification under heading 3001 is excluded. Given its characteristics the product is therefore to be classified under heading 1901 as a food preparation of goods of headings 0401 to 0404 (see also the HSEN to Chapter 19, General, first paragraph).
2. Colostrum powder in capsules of hydroxypropyl cellulose packaged for retail sale in colourfully printed folding cardboard boxes containing three to six blister packs of twenty capsules with the following composition (% by weight): — Milk fat 6,9 — Milk protein 35,7 Furthermore the product contains lactose. The daily dose recommended on the packaging is 1-2 capsules three times a day. According to the label the product is for human consumption.	1901 90 99	Classification is determined by the General Rules 1, 3(a) and 6 for the interpretation of the Combined Nomenclature and the wording of CN codes 1901, 1901 90 and 1901 90 99. The form of presentation of the powder in capsules of hydroxypropyl cellulose determines the use and character of the product as a food preparation. Classification under heading 0404 is therefore excluded (see also the Harmonized System Explanatory Notes (HSEN) to Chapter 4, General, point (I), third paragraph, point (a)). The product cannot be classified as a food preparation of heading 2106 because it is more specifically described by the wording of heading 1901 as a food preparation of goods of headings 0401 to 0404 (see also the HSEN to heading 2106, point (1), second paragraph). As the product is not intended for therapeutic or prophylactic use within the meaning of Chapter 30, classification under heading 3001 is excluded. Given its characteristics the product is therefore to be classified under heading 1901 as a food preparation of goods of headings 0401 to 0404 (see also the HSEN to Chapter 19, General, first paragraph).